attempt by a corporation to release unpaid stock assessments is subject to attack by creditors. *Vick* v. *La Rochelle*, 57 Miss. 602; *Rider* v. *Morrison*, 54 Md. 429; *cf.* 23 HARV. L. REV. 566. Hence the principal case seems correct in not releasing the shareholders, even though the transaction was intended for the benefit of the bank. *Cf. Walters* v. *Porter*, 3 Ga. App. 73, 59 S. E. 452; *In re Reciprocity Bank*, 22 N. Y. 9, 18.

DEEDS — CONDITIONS SUBSEQUENT — IMPOSSIBILITY OF PERFORMANCE. — A widow conveyed land to her son and his wife on their promise and on condition that they maintain and care for her during her life, the deed to be null and void if this condition was not complied with. On the death of one grantee and the incurable insanity of the other, the grantor sues for cancellation of the deed. *Held*, that the deed will be canceled. *Huffman* v. *Rickets*, 111 N. E. 322 (Ind. App.).

It was early laid down that an estate subject to a condition subsequent becomes absolute if the contingency for divesting becomes impossible without fault of the grantee. See CO. LIT. 206 *a*; *Cromwel's Case*, 2 Coke's Rep. 69, 79 *b*. However, the hostility of the courts to conditions subsequent has led them to expand this principle even to cases where the condition is not one for divesting, but a contingency on which the grantee may keep the estate. *In re Bird*, 8 Reports 326; *In re Greenwood*, [1903] 1 Ch. 749. See 6 KENT, COM. 130; KALES, CONDITIONAL AND FUTURE INTERESTS IN ILLINOIS, § 277. But in thus relieving an innocent grantee from a forfeiture which he was helpless to prevent, a court should not go beyond cases where the purpose of the condition has been substantially accomplished, as when a merely collateral desire of the grantor becomes impossible. *Cf. Lynch* v. *Melton*, 150 N. C. 595, 64 S. E. 497. With conditions of support there is no difficulty if the beneficiary dies, though in the lifetime of the testator, as the contingency of divesting cannot happen. *Parker* v. *Parker*, 123 Mass. 584; *Morse* v. *Hayden*, 82 Me. 227, 19 Atl. 443. But when the person to furnish support dies, the performance of the contingency on which the grantee may keep the estate becomes impossible, for the personal attention of the grantee is generally contemplated and therefore his successor cannot perform in his place. See *Glocke* v. *Glocke*, 113 Wis. 303, 312, 89 N. W. 118, 121; cf. *Richards* v. *Merrill*, 13 Pick. (Mass.) 405, 408. On the ground of this impossibility, the weight of authority would probably hold the condition excused. *Merrill* v. *Emery*, 10 Pick. (Mass.) 507; *cf. Anderson* v. *Gaines*, 156 Mo. 664, 57 S. W. 726; *Collett* v. *Collett*, 35 Beav. 312. And it is doubtful whether the maintenance would constitute a charge on the land. *Richards* v. *Merrill*, *supra*. See 3 POMEROY, EQUITY JURISPR. 1246 n. Other courts, looking at the hardship on the widow who would thus be deprived of both the support and the land, have rightfully refused to relieve against the forfeiture provided in the deed, and have restored the land to her. *Cromwel's Case*, *supra*. See *Cross* v. *Carson*, 8 Blackf. (Ind.) 138, 139. However, it is possible that where, as in the principal case, there is both a covenant and a condition, the deed will be construed as if containing a covenant only. See *Hoyt* v. *Kimball*, 49 N. H. 322, 326. *Contra*, *Glocke* v. *Glocke*, *supra*; *Cree* v. *Sherfy*, 138 Ind. 354, 37 N. E. 787. But even if so construed, it is disputed whether equity will grant rescission and restore the land. *Bruer* v. *Bruer*, 109 Minn. 260, 123 N. W. 813; *Bishop* v. *Aldrich*, 48 Wis. 619, 4 N. W. 775. *Contra*, *Stebbins* v. *Petty*, 209 Ill. 291, 70 N. E. 673; *Anderson* v. *Gaines*, *supra*.

ESTATES TAIL — UNUSUAL FORM OF ESTATE TAIL SPECIAL. — Land was devised to a man "and the heirs of his body (other than A., his eldest son)," with remainders over. *Held*, that the devisee took a valid estate tail special, from which A. was excluded. *Elliot* v. *Elliot*, [1916] 1 I. R. 30 (Ch. Div.).

The several kinds of estates tail enumerated in the Statute *De Donis* are not exhaustive, but only examples. See CO. LIT. 24 *a*; CRUISE'S DIGEST, v. 1, Tit.

2, Ch. 1, § 22; CHALLIS, REAL PROPERTY, 3 ed., 288. However, besides the estate tail general, only two classes of tails have become established in property law: an estate limited to the issue of the donee by a particular spouse, and one limited according to the sex of the issue. See CHALLIS, REAL PROPERTY, 3 ed., 290, 295. But other forms have been suggested. The court relied on a case of a gift to the heirs of the body of a man *in posterum procreandis*, where the eldest son was excluded. *Anonymous*, 3 Leon, 87. But there the youngest son took as purchaser. See 2 PRESTON, ESTATES, 450, 451. Coke mentions without comment a gift to a man and his heirs begotten by his son, as a tail special, which passes over a degree. See Co. LIT. 20 *b;* 2 PRESTON, ESTATES, 392, 421. And it is said there may be a tail to a man and the heirs of his body being Protestants. See 2 PRESTON, ESTATES, 362, 445. If those suggestions are sound, there is no stopping place. The donor of any estate confined to the issue of the donee may classify and discriminate between the issue as his fancy dictates; and the descent must follow the lines marked out, until the entail is barred. But there is a policy against the creation of novel estates. See *Johnson* v. *Whiton*, 159 Mass. 424, 426, 34 N. E. 542; Co. LIT. 27 *b;* 1 PRESTON, ESTATES, 472. And it seems more in accord with the present tendency of property law to allow only the established classes of estates tail.

ESTOPPEL *IN PAIS* — WHAT ACTS WILL ESTOP — FAILURE OF ASSIGNEE OF WRITTEN CONTRACT TO TAKE THE WRITING FROM ASSIGNOR. — The obligee of a written contract assigned his rights under the contract but retained the written instrument. The assignee notified the obligor of the assignment. Later an agent of the obligee presented the writing to the obligor and represented that there had been a reassignment. The obligor paid the agent. The assignee now sues on the contract. *Held*, that he is estopped to deny the validity of the payment. *Phelps* v. *Linnan*, 156 N. W. 294 (Ia.)

A person may be estopped not only to deny his own misrepresentation, but also in some cases to deny those he has enabled others to make. See EWART, ESTOPPEL, 19. Thus if a specialty, even though non-negotiable, is delivered to a third person who represents that he has authority to deal with it, the owner will be estopped to deny this authority against a person who has acted in reliance thereon. *Combes* v. *Chandler*, 33 Ohio St. 178; *Moore* v. *Metropolitan National Bank*, 55 N. Y. 41. But some courts do not raise an estoppel unless the instrument is such as by business custom passes freely. *Scollans* v. *Rollins*, 173 Mass. 275, 53 N. E. 863. And certainly the bailment of a chattel will never in itself create an estoppel. *McMahon* v. *Sloan*, 12 Pa. 229; *Ciannone* v. *Fleetwood*, 93 Ga. 491, 21 S. E. 76; *Baker* v. *Taylor*, 54 Minn. 71, 55 N. W. 823. The reason for these distinctions rests in the fundamental nature of the estoppel, the creation of which is dependent upon the deceptiveness of the situation and the fault of its creator, as opposed to the general policy of protecting property rights. Thus while the nature of chattels is such that possession is hardly more indicative of ownership than of bailment, the possession of a specialty, since the instrument is ordinarily of value only as proof of property rights, is a very strong indication of authority to pass title. A written contract presents a situation lying between those two extremes. For while possession is not a prerequisite to its enforcement, yet it is of no value except as evidence of rights therein. In the principal case, however, the assignee did not create the appearances by delivering the contract, but failed to prevent such appearances by neglecting to obtain the instrument. This however should not effect the creation of an estoppel, for given a sufficiently deceptive appearance, a duty should arise of affirmative, as well as negative action. See 18 HARV. L. REV. 140.

EVIDENCE — DOCUMENTS — SECONDARY EVIDENCE: NOTICE TO ACCUSED TO PRODUCE PRIVILEGED DOCUMENTS. — In a trial upon a charge of embezzle-